



Department of Justice

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JUSTICE DEPARTMENT APPROVES JOINT RETAIL MARKETING OF ELECTRIC POWER IN ARKANSAS

WASHINGTON, D.C.-- The Department of Justice today announced that it would not challenge a proposal by 17 rural Arkansas electric power distribution cooperatives that would allow them to jointly market electric power to retail customers.

The Department's Antitrust Division said the proposal would not substantially lessen competition in any electric power market. The Department's position was stated in a business review letter from A. Douglas Melamed, Acting Assistant Attorney General in charge of the Department's Antitrust Division, to counsel for the cooperatives.

The distribution cooperatives are 17 nonprofit cooperative corporations formed under the Electric Cooperative Corporation Act of Arkansas to provide electric service predominantly to rural consumers. Each of the distribution cooperatives is owned by the individual member/consumers that it serves and is legally obligated to distribute annually all of its income to its member/customers.

In 1999, Arkansas enacted the Electric Consumer Choice Act, mandating competition in the retail sale of electricity beginning as early as January 1, 2002. The Act will significantly change the way retail electricity is purchased and sold within the State of Arkansas. Currently, consumers may purchase electric energy only from the regulated electric utility serving the territory in which the consumer is located. Under the Act, a consumer will be allowed to purchase electric energy from anyone in the competitive marketplace, and the consumer's incumbent utility will have to deliver that electricity to the consumer's door under regulated

distribution charges. The primary focus of the new legislation is the separation of the retail marketing activities, which will be completely competitive, from the electric utility's regulated transmission and distribution activities. In order to ensure that the utility's marketing operations do not benefit improperly from its relationship with the utility, the Act generally provides that employees engaged in the transmission and distribution system operations must function independently of employees engaged in the marketing or sale of electricity at retail.

State law also creates an obligation for each incumbent utility to offer a standard service package to any consumer that has not been willing or able to secure an alternative energy service provider. Such consumers are commonly referred to as "default customers." Under the provisions of the Act, each of the distribution cooperatives may serve its default customers directly or assign them to an affiliate. The rates for the standard service package will be a market rate unless the incumbent utility chooses to offer a regulated rate approved by the Arkansas Public Service Commission (PSC).

Under the proposal, the distribution cooperatives propose to create a joint venture to market electric power to retail customers throughout Arkansas. The distribution cooperatives agree to conduct all of their retail marketing activities outside of their traditional local territories through the joint marketing venture. If a distribution cooperative decides to withdraw from the joint venture, the departing distribution cooperative may compete with it for any and all consumers. Each distribution cooperative will individually decide whether to serve its default customers directly or to assign its default customers to the joint venture.

Each of the distribution cooperatives has a relatively small amount of the electric power generating capacity in the State of Arkansas. The combined generating power capacity of all of the distribution cooperatives constitutes approximately six percent of the total generating capacity in the two areas of the State in which the joint venture is likely to market. According to the

applicants, the joint venture would attain economies of scale that would give it significantly lower distribution costs in state-wide or regional markets than would be attainable by individual members.

A. Douglas Melamed, Acting Assistant Attorney General in charge of the Antitrust Division, indicated that it does not appear that the proposal to form a joint retail marketing venture would have any anticompetitive effect. He stated that, “while the distribution cooperatives could be viewed as potential entrants into each other’s local retail markets, regional markets and a state-wide market, their small size and relatively high operating costs make it unlikely that they could enter new markets on their own or that, if they tried to enter, they would offer effective competition.”

Under the Department’s Business Review Procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws.

A file containing the business review request and the Department’s response may be examined in the Antitrust Documents Group of the Antitrust Division, Suite 215, Liberty Place, 325 7th Street, N.W., Department of Justice, Washington, D.C. 20004. After 30-day period, the documents supporting the business review will be added to the file.

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